BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF ORIS B. MOON, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	PCHB No. 79-103 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the cancellation of a portion of a permit (QB-140) to use artificially stored ground water, came before the Pollution Control Hearings Board, Chris Smith and David Akana (presiding), at a formal hearing in Ellensburg on October 29, 1979.

Appellant appeared pro se.; respondent was represented by Wick Dufford, Assistant Attorney General.

Having heard or read the testimony, having examined the exhibits, having considered the contentions of the parties; and the Board having issued two proposed orders and having received and considered

exceptions to its proposed orders; and having granted the exceptions in part and denied the exceptions in part, and having received further evidence from respondent but not relying upon such evidence for its decision, the Board now makes these

FINDINGS OF FACT

I

Appellant is the owner of 183 acres located five miles east of George and south of I-90 in the Quincy Ground Water Sub-area in Grant County. On March 17, 1975 he received a permit (G3-20982P--QB-140) to use 3.5 acre-feet per year per acre of artificially stored ground water on 160 acres of his property located within the NW 1/4 of Sec. 2, T. 18 N., R. 25 EWM. In 1976 appellant installed an irrigation circle which can presently irrigate up to 133 acres of the 160 acre property.

II

In March of 1978, respondent reviewed the development accomplished by appellant and noted that only 130 acres of the 160 permitted acres were placed under irrigation. A letter was sent to appellant asking that he show cause why the permit should not be cancelled. Appellant's response was that he had purchased the water from the United States Bureau of Reclamation and that he did not wish to invest in irrigating the additional 30 acres until the present circle was replaced with one with a corner catcher. A six year extension was requested by appellant. A one year extension was granted by respondent.

III

In April of 1979, respondent's agent visited the site and

determined that 130 acres were put under cultivation and that no corners of the site were irrigated. A second show cause letter was sent to appellant on April 17, 1979. On May 30, 1979 respondent received a letter from appellant stating that he had completed development of the 160 acres. The claim was investigated on June 6, 1979. At that time, the ground was plowed for 12' at 60 foot intervals in an east-west direction at all four corners. Otherwise the ground remained in sage, grass and natural vegetation. No crop was growing nor was there evidence of application of water upon the corners. Respondent thereafter issued an amended permit showing a change from 160 acres to 130 acres with a proportionate reduction in water quantity, which action was appealed to this Board.

IV

Having originally installed a circle to irrigate a mixiumum of about 133 acres, appellant found it was not economically feasible in 1978 to replace it and install one which could irrigate the corners.

V

Because replacement of his irrigation circle was not economically feasible, appellant purchased part of the equipment necessary to provide water to the remaining 27 acres of the site in March of 1979 in order to use it as a bird habitat but there is no evidence that water was ever applied to any of this land. Respondent first learned that appellant desired to establish a bird habitat when appellant appealed to this Board. Respondent does not oppose a permit to use water for such purpose, but not at a water duty of 3.5 acre-feet per year per acre.

VI

Appellant did not challenge the permit condition limiting withdrawals to 3.5 acre-feet per year per acre or the regulation which sets such limit as the maximum water duty permissible.

VII

Appellant testified that he felt he had used approximately 4 acre feet of water per acre, in the area covered by the circle, but this was not substantiated by any records from the metering device installed as required by Section 2 of the permit, nor by the records of electric power consumption which are good indicators of the amounts of water pumped. Thus appellant failed to establish by competent evidence that he has beneficially used in excess of the 3.5 acre feet per acre on the 133 acres irrigated by the circle.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Respondent does not quarrel over whether the number of acres actually developed is 130 or 133. However, it does contend that the remaining acreage of the 160 acre site has not been developed according to the terms of the development schedule with due diligence. Appellant has not attempted, nor does he intend, to place the remaining 27 or so acres under irrigation for agricultural purposes during the lifetime of his permit because of economic

considerations. Consequently, an extension of the development schedule would serve no useful agriculturally-related purpose.

Since appellant did not establish that he had utilized more than 3.5 acre feet of water per acre on the 133 acres irrigated by the circle, he is entitled only to a maximum of 3.5 acre feet of water for the irrigation of each of his 133 acres.

Finally, the expressed purpose of the instant permit was to provide a 3.5 acre-foot per year per acre water duty for agricultural irrigation. Consequently, those incomplete steps taken by appellant after expiration of the one year time extension to raise pheasants cannot be used to save the full 160 acre use for irrigation.

II

Other than the total area actually developed, we find no error in the Department of Ecology's action. Accordingly, we remand this matter to the Department to issue a permit showing 133 acres rather than 130 acres and to adjust the total quantity of water, correspondingly. In all other respects the action is affirmed.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

The permit is remanded to the Department of Ecology for reissuance showing 133 total acres rather than 130 acres and to adjust the total quantity of water correspondingly. In all other respects the Department of Ecology action is affirmed.

DATED the 10th day of June, 1980.

POLLUTION CONTROL HEARINGS BOARD

David Akana

DAVID AKANA, Member

CHRIS SMITH, Member

Nat W. Washington

NAT W. WASHINGTON, Chairman